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MAR 09 2005

Docket No.: M4065.0743/P743  
(PATENT)

## IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

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In re Reissue Application of:  
Steven T. Harshfield, et al.

Examiner: William D. Coleman

Application No.: 09/853,233

Group Art Unit: 2823

Filed: May 11, 2001

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For: MEMORY CELL AND METHOD OF  
MAKING SAME

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**PETITION TO WITHDRAW THE HOLDING OF ABANDONMENT**  
**UNDER 37 C.F.R. § 1.181(A)**Commissioner For Patents  
MS: Issue Fee  
P.O. Box 1450  
Alexandria, VA 22313-1450

Dear Sir:

This is a Petition under 37 C.F.R. § 1.181(a) and M.P.E.P. § 711.03(c), page 700-154. Petitioners request withdrawal of the holding of abandonment. The above-referenced patent application is not abandoned since a timely reply was filed on November 23, 2004 in response to the Notice of Allowance dated August 25, 2004. A copy of our submission papers, which were faxed to and received by the PTO on November 23, 2004, is enclosed.

Telephonic conferences were conducted with the Examiner on November 23, 2004 concerning an erroneous Examiner's Statement for Reasons of Allowance. The reasons for allowance stated that the claims were allowed "in relation to the declaration

DSMDB.1895619.2

Application No.: 09/953,233

Docket No.: M4065.0743/P743

filed on December 23, 2003." The Examiner indicated in the telephonic conferences that the electronic filing system designated the Declarations filed on October 14, 2003 and December 23, 2003, respectively, as Rule 131 or Rule 132 Declarations. This information was incorrect. The Declarations disclosed potential prior art for the Examiner's review.

In the November 23, 2004 telephonic conferences, the Examiner requested that Applicants file a statement noting the error and indicating that the Declarations filed on October 14, 2003 and December 23, 2003, respectively, were not Rule 131 or Rule 132 Declarations. Upon receipt of the statement noting the error, the Examiner indicated that he would immediately withdraw the application from issue and re-open prosecution to more fully consider the Declarations. A Confirmation of Telephonic Conferences with Examiner Coleman on November 23, 2004 With Accompanying Comments was filed, by certified facsimile transmission on November 23, 2004, memorializing these telephonic conversations. Enclosed is a copy of the facsimile transmission, including the cover page which are time and date-stamped 11/23 16:20, indicating that these papers were timely filed and received by the U.S. Patent and Trademark Office. Upon the filing and receipt of this paper, prosecution was to be re-opened immediately, per the Examiner.

Accordingly, no fee is believed to be due for this Petition since a Response was timely filed on November 23, 2004. If any fee is due, however, please charge it to our Deposit Account No. 04-1073 (Order No. M4065.0743/P743).

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If despite the foregoing, the PTO considers the present application to be abandoned, Applicants respectfully request that this paper be considered as a Petition to Revive an Unintentionally Abandoned Application. The entire delay was unintentional and caused by Patent Office delay in promptly reopening prosecution. The enclosed documents are fully responsive to the February 18, 2005, Notice of Abandonment. Please charge our Deposit Account No. 04-1073 (Order No. M4065.0743/P743), the petition fee set forth in 37 C.F.R. § 1.17(l).

Dated: March 9, 2005

Respectfully submitted,

By 

Thomas J. D'Amico

Registration No. 28,371

DICKSTEIN SHAPIRO MORIN &amp;

OSHINSKY LLP

2101 L Street NW

Washington, DC 20037-1526

202-828-2232

Attorney for Applicants

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MAR 09 2005

## FAX TRANSMISSION



DATE: March 9, 2005  
CLIENT NO.: M4065.0743/P743 (U.S. Patent App. No.: 09/853,233)  
MESSAGE TO: OIPE Customer Service, Petition to Withdraw the Holding of Abandonment  
COMPANY: U.S. Patent and Trademark Office  
FAX NUMBER: (703) 872-9306  
PHONE:  
FROM: Thomas J. D'Amico, Reg. No. 28,371  
PHONE: (202) 828-2232

PAGES (Including Cover Sheet):

11

HARD COPY TO

☐

YES

☒

NO

Please file the attached Petition To Withdraw Holding of Abandonment Under 37 C.F.R. § 1.181(A), in U.S. Patent Application No.: 09/853,233. The undersigned certifies that the attached Petition is being transmitted to the U.S. Patent and Trademark Office by facsimile transmission on March 9, 2005.

  
Thomas J. D'Amico, Reg. No. 28,371

If your receipt of this transmission is in error, please notify this firm immediately by collect call to our Facsimile Department at 202-861-9106, and send the original transmission to us by return mail at the address below.

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\*\*\* TX REPORT \*\*\*  
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TX/RX NO	2991
CONNECTION TEL	4065#0743#6712731858
SUBADDRESS	
CONNECTION ID	
ST. TIME	11/23 16:20
USAGE T	00'59
PGS. SENT	3
RESULT	OK

## FAX TRANSMISSION



DATE: November 23, 2004  
CLIENT NO.: M4065.0743/P743  
MESSAGE TO: Examiner William D. Coleman, Group Art Unit: 2823  
COMPANY: U.S. Patent and Trademark Office  
FAX NUMBER: (571) 273-1856 / (703) 872-9306  
PHONE: (571) 272-1856  
FROM: Thomas J. D'Amico, Reg. No. 28,371  
PHONE: (202) 828-2232

PAGES (Including Cover Sheet): 3HARD COPY TO FOLLOW: ☒ YES ☐ NO

As requested by Examiner Coleman in a telephonic conference conducted on November 23, 2004, please file the Confirmation of Telephonic Conferences with Examiner Coleman on November 23, 2004 with Accompanying Comments, in U.S. Patent Application No.: 09/853,233. The undersigned certifies that the attached Confirmation is being transmitted to the U.S. Patent and Trademark Office by facsimile transmission on November 23, 2004.

  
Thomas J. D'Amico, Reg. No. 28,371

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\*\*\* TX REPORT \*\*\*  
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TRANSMISSION OK

TX/RX NO	2992
CONNECTION TEL	4065#0743#7038729306
SUBADDRESS	
CONNECTION ID	
ST. TIME	11/23 16:22
USAGE T	00'58
PGS. SENT	3
RESULT	OK

## FAX TRANSMISSION



DATE: November 23, 2004  
CLIENT NO.: M4065.0743/P743  
MESSAGE TO: Examiner William D. Coleman, Group Art Unit: 2823  
COMPANY: U.S. Patent and Trademark Office  
FAX NUMBER: (571) 273-1856 / (703) 872-9306  
PHONE: (571) 272-1856  
FROM: Thomas J. D'Amico, Reg. No. 28,371  
PHONE: (202) 828-2232

PAGES (Including Cover Sheet): 3 HARD COPY TO FOLLOW: ☒ YES ☐ NO

As requested by Examiner Coleman in a telephonic conference conducted on November 23, 2004, please file the Confirmation of Telephonic Conferences with Examiner Coleman on November 23, 2004 with Accompanying Comments, in U.S. Patent Application No.: 09/853,233. The undersigned certifies that the attached Confirmation is being transmitted to the U.S. Patent and Trademark Office by facsimile transmission on November 23, 2004.

  
Thomas J. D'Amico, Reg. No. 28,371

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DATE: November 23, 2004  
CLIENT NO.: M4065.0743/P743  
MESSAGE TO: Examiner William D. Coleman, Group Art Unit: 2823  
COMPANY: U.S. Patent and Trademark Office  
FAX NUMBER: (571) 273-1856 /(703) 872-9306  
PHONE: (571) 272-1856  
FROM: Thomas J. D'Amico, Reg. No. 28,371  
PHONE: (202) 828-2232

PAGES (Including Cover Sheet): 3 HARD COPY TO FOLLOW: ☒ YES ☐ NO

As requested by Examiner Coleman in a telephonic conference conducted on November 23, 2004, please file the Confirmation of Telephonic Conferences with Examiner Coleman on November 23, 2004 with Accompanying Comments, in U.S. Patent Application No.: 09/853,233. The undersigned certifies that the attached Confirmation is being transmitted to the U.S. Patent and Trademark Office by facsimile transmission on November 23, 2004.

  
Thomas J. D'Amico, Reg. No. 28,371

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Docket No.: M4065.0743/P743  
(PATENT)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Patent Application of:  
Steven T. Harshfield, et al.

Examiner: William D. Coleman

Application No.: 09/853,233

Art Unit: 2823

Filed: May 11, 2001

Allowed: August 25, 2004

For: PCRAM MEMORY CELL AND METHOD  
OF MAKING SAME

CONFIRMATION OF TELEPHONIC CONFERENCES WITH EXAMINER  
COLEMAN ON NOVEMBER 23, 2004 WITH ACCOMPANYING COMMENTS

Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Dear Sir:

Applicants' undersigned representative acknowledges with appreciation the telephonic conferences conducted with Examiner William Coleman, on November 23, 2004. In both the November 23, 2004 telephonic conferences and the "Response to Rule 312 Communication" issued by the Examiner on November 23, 2004, the Examiner stated that, "Claims 21, 23, 24, 25, 26, 28, 29, 30, 31, 35, 36, 37, 38, 42, 43, 44, 84, 85, 86, 89, 90, 91, 92, 93, 94, 95, 96, 97, and 98 [are] allowed." The reasons for allowance stated that the claims are allowed "in relation to the declaration filed on December 23, 2003." The Examiner indicated in the telephonic conferences that the electronic filing system designated the Declarations filed on October 14, 2003 and December 23, 2003, respectively, as Rule 131 or Rule 132 Declarations. This information is incorrect.



Application No.: 09/853,233

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Applicants submitted a Declaration of Terry Gilton Calling Attention to Information Pursuant to 37 C.F.R. § 1.56 on October 14, 2003 and December 23, 2003. The Declarations disclosed potential prior art for the Examiner's review. The Declarations are not Rule 131 or Rule 132 Declarations.

In the November 23, 2004 telephonic conferences, the Examiner requested that Applicants file a statement indicating that the Declarations filed on October 14, 2003 and December 23, 2003, respectively, were not Rule 131 or Rule 132 Declarations. Accordingly, this paper serves as that statement.

If not already done, Applicants respectfully request that the Declarations filed on October 14, 2003 and December 23, 2003 be considered for purposes of disclosing potential prior art. As the Examiner indicated, with submission of this paper, he will immediately withdraw the application from issue and re-open prosecution. Accordingly, Applicants understand that the issue fee payment currently due on November 26, 2004, is no longer required. Immediate return confirmation of this by facsimile is respectfully requested.

Dated: November 23, 2004

Respectfully submitted,

By 

Thomas J. D'Amico

Registration No.: 28,371

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Docket No.: M4065.0743/P743  
(PATENT)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Patent Application of:  
Steven T. Harshfield, et al.

Examiner: William D. Coleman

Application No.: 09/853,233

Art Unit: 2823

Filed: May 11, 2001

For: MEMORY CELL AND METHOD OF  
MAKING SAME

CONFIRMATION OF TELEPHONIC CONFERENCE WITH EXAMINER WILLIAM  
COLEMAN ON MARCH 7, 2005

Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Dear Sir:

Applicants' undersigned representative acknowledges with appreciation the telephonic conference conducted with Examiner William D. Coleman on March 7, 2005. In the March 7, 2005 telephonic conference, Examiner Coleman acknowledged that the Notice of Abandonment, dated February 18, 2005, should not have been issued. Examiner Coleman further acknowledged timely receipt of the certified facsimile transmission of the Confirmation of Telephonic Conferences With Examiner Coleman on November 23, 2004 With Accompanying Comments (two pages) and the fax cover on November 23, 2004.

DSMDB.1895509.2

Application No.: 09/853,233

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The Examiner stated that the above-referenced application should have been withdrawn from allowance since he was going to re-open prosecution to consider the Declarations filed on October 14 and December 23, 2003, respectively. Accordingly, a Petition to Withdraw the Holding of Abandonment Under 37 C.F.R. § 1.181(a) is being filed concurrently herewith. Applicants respectfully request that the Petition be granted and the holding of abandonment be withdrawn for the above-referenced application. Applicants also request that the Examiner re-open prosecution to fully consider the Declarations filed on October 14 and December 23, 2003, respectively.

Dated: March 9, 2005

Respectfully submitted,

By 

Thomas J. D'Amico

Registration No.: 28,371

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